

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:12cv558
[3:93cr89]**

PHILLIP HENRIQUES,

Petitioner,

Vs.

UNITED STATES OF AMERICA,

Respondent.

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ORDER

THIS MATTER is before the court on petitioner’s “Motion to Vacate, Set Aside, or Correct Sentence Pursuant to Title 28 U.S.C. § 2255(f)(3) (#147), filed on August 27, 2012. For the reasons stated herein, the petitioner’s Motion to Vacate will be dismissed.

In reviewing the record, the court notes that petitioner filed his first Motion to Vacate, Set Aside or Correct Sentence in 1997, which was denied in part by this court on May 4, 1998 (#99). Petitioner filed a motion with the United States Court of Appeals for the Fourth Circuit to file a successive motion pursuant to Section 2255, which the court denied on July 23, 2001 (#117). Petitioner then filed another Motion to Vacate on January 19, 2006 (#118), which this court denied on January 24, 2006 (#119).

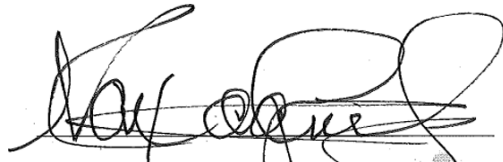
As petitioner is by now well aware, his instant filing is a successive petition under the *Antiterrorism and Effective Death Penalty Act* (hereinafter the “AEDPA”). See 28 U.S.C. § 2255. The AEDPA requires that a “second or successive motion must be certified . . . by a panel of the appropriate court of appeals . . .” before it can be filed in the district court. Id. “Before a second or successive application [for habeas corpus] is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Thus, this court may not consider the merits of petitioner’s claims because he failed to first seek authorization from the Court of Appeals for the Fourth Circuit

before filing it in this court.

ORDER

IT IS, THEREFORE, IT IS HEREBY ORDERED that petitioner's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to Title 28 U.S.C. § 2255(f)(3) is **DISMISSED** without prejudice.

Signed: September 5, 2012

A handwritten signature in black ink, appearing to read 'Max O. Cogburn Jr.', written over a horizontal line.

Max O. Cogburn Jr.
United States District Judge